change (File No. SR–PTC–94–09) as described in Items I, II, and III below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to codify PTC's rules and provide for the distribution to participants and limited purpose participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Following an inspection of PTC in 1994, the Commission's Northeast Regional Office recommended that PTC file a rule change with the Commission to provide participants with a new set of rules and procedures which encompasses all amendments.[2] The filing of the present proposed rule change to codify PTC's rules and distribute the codified rules to participants and limited purpose participants complies with this recommendation.

Specifically, PTC is distributing to participants and limited purpose participants a fully codified set of rules incorporating all amendments into the text of the rules. In addition, the codified set of rules integrates into the rules PTC's procedures which were formerly appended to the rules as a supplement and which, in certain cases, superseded conflicting provisions in the rules. The integration of the amendments and the procedures into the text of PTC's rules makes them easier to follow and to understand by eliminating the need to refer to several documents at once. In the future, amendments to the rules will be distributed to participants and limited purpose participants in the form of substitute pages that will replace superseded pages in the codified text.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder in that it is designed to promote the prompt and accurate settlement of securities transactions and to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate settlement of securities transactions.

(B) Self-Regulatory Organization's Statements on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and subparagraph (e)(1) of Rule 19b–4[5] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–94–09 and should be submitted by February 10, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1495 Filed 1–19–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Letter from Richard H. Walker, Regional Director, Northeast Regional Office, Commission, to John J. Sceppa, President and Chief Executive Officer, PTC (July 7, 1994).

[3] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[4] 15 U.S.C. § 78(b)(3)(A)(i) (1988).

[5] 17 CFR 240.19b–4(e)(1) (1994).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. IC–20839; 813–132]

Morgan Stanley Capital Investors, L.P. and Morgan Stanley Group Inc.; Notice of Application

January 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Morgan Stanley Capital Investors, L.P. (the ''Initial Partnership''; and Morgan Stanley Group Inc. (''MSG'').

RELEVANT ACT SECTIONS: Applicants seek an order under sections 6(b) and 6(e) granting an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants seek an order, on behalf of the Initial Partnership and certain partnerships or investment vehicles organized by MSG (together, the ''Partnerships'') that would grant an exemption from most provisions of the Act, and would permit certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act. Partnership interests will be offered to

eligible employees, officers, directors, and advisory directors of MSG and its affiliates.

FILING DATES: The application was filed on May 2, 1994, and amended on July 20, 1994, September 26, 1994, and January 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 8, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1251 Avenue of the Americas, New York, NY 10020.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942–0656, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MSG and its subsidiaries (collectively, the ''Morgan Stanley Group'') constitute a global financial services firm. Morgan Stanley & Co. Incorporated (''MS&Co''), a wholly-owned subsidiary of MSG, is the principal broker-dealer affiliate of the Morgan Stanley Group and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). MS&Co. and MSG are registered as investment advisers under the Investment Advisors Act of 1940 (the ''Advisers Act'').

2. The Initial Partnership is a newly-formed Delaware limited partnership and one of several anticipated investment vehicles that are to be formed for the purpose of enabling certain employees, officers, directors, and advisory directors of the Morgan Stanley Group to pool their investment resources and to participate in various types of investment opportunities, including venture capital and private equity investments. The pooling of resources permits diversification and participation in investments that usually would not be offered to individual investors. The goal of the Partnerships is to reward and retain key personnel by enabling them to participate in investment opportunities that would not otherwise be available to them and to attract other individuals to the Morgan Stanley Group.

3. The Partnerships will operate as non-diversified closed-end management investment companies. The Partnerships will seek to achieve a high rate of return through long-term capital appreciation in risk capital opportunities. The Initial Partnership will co-invest alongside two private equity funds (the ''Equity Funds'') that recently were organized by the Morgan Stanley Group for third-party investors. The Equity Funds are exempt from registration under the Act in reliance upon section 3(c)(1) thereunder.[1] Similarly, subsequent Partnerships primarily will co-invest alongside other private investment funds organized by the Morgan Stanley Group for third-party investors (such private investment funds, collectively with the Equity Funds, are referred to herein as the ''Investment Funds'').

4. The general partner or other manager of each Partnership (the ''General Partner'') will be registered as an investment adviser under the Advisers Act. The General Partner of each Partnership also may serve as the general partner or manager of the related Investment Funds.

5. Interests in each Partnership will be offered without registration under a claim of exemption pursuant to section 4(2) of the Securities Act of 1933 (the ''Securities Act'').[2] Interests will be offered and sold only to (a) ''Eligible Employees'' of the Morgan Stanley Group, or (b) trusts or other investment vehicles for the benefit of such Eligible Employees and/or the benefit of their immediate families (''Limited Partners''). To be an Eligible Employee, an individual must be a current employee, officer, director, or advisory director of an entity within the Morgan Stanley Group and, except for certain individuals described in paragraph 6 below, an ''accredited investor'' meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the Securities Act. The limitations on the class of persons who may acquire interests, in conjunction with other characteristics of the Partnership, will qualify the Partnership as an ''employees' securities company'' under section 2(a)(13) of the Act.

6. Eligible Employees who are not accredited investors but who manage the day-to-day affairs of a Partnership may be permitted to invest their own funds through the General Partner of the Partnership if such individuals had reportable income from all sources in the calendar year immediately preceding such person's participation in excess of $120,000, and have a reasonable expectation of reportable income in the years in which such person will be required to invest his/her own funds of at least $150,000. These individuals will have primary responsibility for operating the Partnership. Such responsibility will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the Limited Partners, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions. Accordingly, all such individuals will be closely involved with, and knowledgeable with respect to, the Partnership's affairs and the status of Partnership investments.

7. Only a small proportion of the Morgan Stanley Group's personnel qualify as Eligible Employees. The Eligible Employees are experienced professionals in the investment banking, merchant banking, or securities business, or in administrative, financial, accounting, or operational activities related thereto. No Eligible Employee will be required to invest in any Partnership.

8. The management and control of each Partnership, including all investment decisions, will be vested exclusively in the General Partner. The management and control of the General Partner, in turn, will be vested, directly or indirectly, in MSG. Thus, the business and affairs of each Partnership indirectly will be managed by or under the direction of the board of directors or other committee serving similar functions (the ''Board'') of an entity (the ''MS Subsidiary Corporation'') that is directly or indirectly controlled by MSG and directly controls the Partnership. Each Board, among other things, will act as the investment committee of the Partnership responsible for approving all investment and valuation decisions. Actions by the Board generally will

[1] Section 3(c)(1) exempts from the definition of investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and is not making and does not presently propose to make a public offering of its securities.

[2] Section 4(2) exempts transactions by an issuer not involving any public offering from the Securities Act's registration requirement.

require the vote of a majority of its members. Each Board will be comprised exclusively of directors and officers of the Morgan Stanley Group, each of whom is expected to qualify as an Eligible Employee. The day-to-day affairs of each Partnership will be managed by Eligible Employees who are officers or employees of the Morgan Stanley Group.

9. With respect to the Initial Partnership, the partners thereof currently consist of the General Partner and a wholly-owned subsidiary of MSG, as sole limited partner (the ''MS Limited Partner''). The Initial Partnership has obtained subscriptions from a number of Eligible Employees to acquire limited partnership interests in the Initial Partnership. Such Eligible Employees, however, have not yet been admitted to the Partnership. As promptly as practicable after receipt of the requested order, the Eligible Employees will be admitted to the Initial Partnership as Limited Partners, and the limited partnership interest held by the MS Limited Partner will be redeemed by the Initial Partnership in full. Upon their admission into the Initial Partnership, the Eligible Employees will be allocated their shares of any investment made, and expense incurred, by the Initial Partnership prior to their admission, and will be required to make capital contributions to the Initial Partnership as if they had been Limited Partners from the formation of the Initial Partnership.

10. The terms of each Partnership are expected to be based upon the terms of the related Investment Fund, and corresponding or analogous terms of each (or terms having substantially the same intent or effect) are expected to be substantially identical, except as described below. In addition, if the Partnership is required to co-invest ''lock-step'' with the related Investment Fund (which is generally expected to be the case), various terms designed for the protection of the investors in the related Investment Fund also will accrue to the benefit of the Limited Partners. Such terms may include, for example, (a) limitations with respect to the amounts permitted to be invested in the securities of certain issuers, and the nature of investments permitted to be made, by the related Investment Fund, and (6) limitations on the ability of the General Partner and its affiliates to engage in certain types of activities, such as the formation of a new Investment Fund or the making of certain types of investments for its own account without first having offered the investment opportunity to the related Investment Fund. In any event, the terms of each Partnership will be disclosed to the Eligible Employees at the time they are offered the right to subscribe for interests in the Partnership. To the extent there are differences between the terms of a Partnership and the related Investment Fund, or the Partnership could be affected by the terms of or actions taken with respect to the Investment Fund, such differences or effects also will be disclosed to the Eligible Employees.

11. The General Partner of each Partnership will have all powers necessary, proper, suitable or advisable to carry out the purposes and business of the Partnership. The General Partner of each Partnership also may serve as the general partner or manager of the related Investment Fund and, in such capacity, be vested exclusively with the management and control of the Investment Fund.

12. The General Partner of each Partnership generally will have a capital commitment to the Partnership equal to at least 1% of the Partnership's aggregate capital commitment and thus will be required to make capital contributions to the Partnership. In order for the General Partner to meet its capital contribution requirements, Morgan Stanley Group will be required to capitalize the MS Subsidiary Corporation with sufficient funds (and, if the General Partner is organized as a limited partnership or other non-corporate entity, the individual partners or other investors of the General Partner also will be required to fund their *pro rata* share of such capital contributions).

13. The General Partner of each Partnership, as the general partner or manager of the related Investment Fund, will have a capital commitment to such Investment Fund. Another entity within the Morgan Stanley Group also may participate in such Investment Fund as a limited partner or other investor on the same terms as other third-party investors. In addition, individuals serving on the Board or managing the day-to-day affairs of the Partnership may also elect to invest their own funds as Limited Partners of the Partnership on the same terms as other Eligible Employees.

14. The General Partner of each Partnership will pay its normal operating expenses, including rent and salaries of its personnel and certain expenses. To the extent any expenses are not borne by the General Partner, the Partnership will be required to pay such expenses. Such expenses may include, without limitation, the fees, commissions and expenses of an entity within the Morgan Stanley Group for services performed by such entity for such Partnership such as, for example, brokerage or clearing services in the Partnership's portfolio securities.

15. The General Partner of a Partnership may be paid an annual management fee, generally determined as a percentage of assets under management or aggregate commitments. The General Partner of a Partnership also may be entitled to receive a performance-based fee (or ''carried interest'') of a specified percentage based on the gains and losses of such Partnership's or each Limited Partner's investment portfolio.[3] Such percentage will not exceed that used in calculating the General Partner's carried interest in the related Investment Fund. All or a portion of the carried interest arising from Partnership investments may be paid to the individuals who are partners of or investors in the General Partner. In addition, the General Partner may be entitled to other compensation from the Partnership as provided for in the Partnership Agreement of the Partnership, such as acquisition fees, disposition fees, structuring fees or other fees for additional services rendered by the General Partner to the Partnership in connection with the Partnership's affairs.

16. Each Partnership generally will be required to invest ''lock-step'' in investment opportunities in which the related Investment Fund invests. In connection with any such investment opportunity, the amount of the Partnership's do-investment will be determined in accordance with a specified formula. Such formula is expected to provide that the amount of the Partnership's co-investment will bear the same proportion to the aggregate investments of the related Partnership as the aggregate capital commitments of the Investment Fund and the Partnership as the aggregate capital commitments of the Investment Fund and the Partnership. In addition, the Partnership generally will be required to make any co-investments on terms no more favorable than those applicable to the investments by the related Investment Fund.[4]

[3] A ''carried interest'' is an allocation to the General Partner based on net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions. Any carried interest will be structured to comply with the requirements of rule 205–3 under the Advisers Act.

[4] It is anticipated that the economic terms applicable to the Partnership's investments will be substantially the same as those applicable to the corresponding investments by the related Investment Fund; however, it is possible that the related Investment Fund may invest in a different class of securities or that the Investment Fund's

Continued

17. It is possible that a Partnership will not participate in investment opportunities due to regulatory, tax, or other considerations even though the related Investment Fund proceeds to make investments in connection with such investment opportunities. The circumstances, if any, in which a Partnership will or will not make an investment alongside the related Investment Fund will be provided for in the Partnership Agreement. Under no circumstances, however, will a Partnership make an investment unless the related Investment Fund also makes an investment in connection with the applicable investment opportunity.

18. Similarly, each Partnership, except as permitted by condition 3 below, will be given the opportunity to sell or otherwise dispose of its investments prior to or concurrently with, and on the same terms as sales or other dispositions by the related Investment Fund.

19. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds), and a Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

20. The ''lock-step'' investment requirements described above could enable the Limited Partners of each Partnership to derive the benefit of various terms applicable to the related Investment Fund that were designed for the protection of investors in such Investment Fund. It also is possible that the terms of the related Investment Fund will include provisions that would give the investors of the Investment Fund rights that are specifically not made available to the Limited Partners of the Partnership. For example, investors of the Investment Fund may have the right (which will not be available to the Limited Partners) to make additional co-investments outside such Investment Fund in certain investment opportunities.

21. Subject to the terms of each Partnership and the related Investment Fund, the Partnership will be permitted to enter into transactions involving an entity within the Morgan Stanley Group (including without limitation the related Investment Fund), a portfolio company, and partner of or other investor in the related Investment Fund that is not an entity within the Morgan Stanley Group (together with the affiliates (as defined in rule 12b–2 under the Exchange Act) of such partner or other investor, hereinafter referred to as a ''Non-MS Investment Fund Partner''), or any partner or person or entity related to any partner. Such transactions may include, without limitation, the purchase or sale by the Partnership of an investment, or an interest therein, from or to any entity within the Morgan Stanley Group, acting as principal. With respect to any investment purchased by a Partnership from an entity within the Morgan Stanley Group, acting as principal, the Partnership will acquire the investment for no more than the fair value at the time of purchase, plus carrying costs and certain organizational expenses. The fair value at the time of such purchase may be more or less than the price paid by the entity, depending on the appreciation or depreciation in the particular investment.

22. No individual who serves on the Board or manages or is otherwise employed to perform the day-to-day affairs of the Partnership will be permitted to invest his or her own funds in connection with any Partnership investment, except through the related Investment Fund or the Partnership as a partner or other investor of the General Partner, through the Partnership as a Limited Partner of the Partnership, or through the exercise of stock options or warrants granted, on the same terms and amounts, to all outside directors of the entities in which such Partnership invests.

23. An entity within the Morgan Stanley Group (including the General Partner) may provide investment banking, management, or other services and receive fees or other compensation and expense reimbursement in connection therewith from entities in which a Partnership makes an investment or competitors of such entities. Such fees or other compensation may include, without limitation, advisory fees, organization or success fees, financing fees, management fees, performance-based fees, fees for brokerage and clearing services, and compensation in the form of carried interests entitling the entity to share disproportionately in income or capital gains or similar compensation. An entity within the Morgan Stanley Group also may engage in market-making activities with respect to the securities of entities in which a Partnership makes an investment or competitor of such entities. Employees of an entity within the Morgan Stanley Group may serve as officers or directors of such entities pursuant to rights held by a Partnership or the related Investment Fund to designate such officers or directors, and receive officers' and directors' fees and expense reimbursement in connection with such services. The Morgan Stanley Group reserves the right not to charge or to waive all or part of any such fees or other compensation or expense reimbursement that a Partnership otherwise might incur or bear indirectly. However, any such fees or other compensation or expense reimbursement received by an entity within the Morgan Stanley Group generally will not be shared with any Partnership.

24. With regard to the transactions described above into which a Partnership directly or indirectly enters, the Board must determine prior to entering into such transaction that the terms thereof are fair to the partners and the Partnership.

25. Interests in a Partnership will be non-transferable, except with the prior written consent of the General Partner of the Partnership, which consent may be withheld in its sole discretion. In any event, interests will not be transferable to persons other than: (a) Other Eligible Employees; (b) trusts or other investment vehicles for the benefit of such Limited Partner and/or such Limited Partner's immediate family; or (c) an entity within the Morgan Stanley Group.

26. Upon the death of a Limited Partner, or such Limited Partner becoming incompetent, insolvent, incapacitated or bankrupt, such Limited Partner's estate or legal representative will succeed to the Limited Partner's interest as an assignee for the purpose of settling such Limited Partner's estate or administering such Limited Partner's property, and may not become a Limited Partner.

27. Interests in a Partnership may be redeemable by the Partnership upon the Limited Partner's termination of employment from the Morgan Stanley Group. Alternatively, Morgan Stanley Group may have the right to purchase a Limited Partner's interest upon such termination of employment. The terms upon which an interest may be so redeemed or purchased, including the manner in which the redemption or purchase price will be determined, will be fully disclosed to Eligible Employees at the time they are offered the right to subscribe for the interest. In any event, with respect to a redemption, the redemption price will not be less than the lower of (a) the amount invested plus interest calculated at a rate per

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investment may have more favorable non-economic terms (e.g., the right to representation on the board of directors of the portfolio company) in light of differences in legal structure, or regulatory, tax, or other considerations.

annum at least equal to the discounted rate for 90-day Treasury bills for the period since the investment and (b) the then fair value (as determined by the General Partner) of the interest, less amounts, if any, forfeited by the Limited Partner for failure to make required capital contributions.

28. The consequences to a Limited Partner who defaults on his or her obligation to fund a required capital contribution to the Partnership will be described in the applicable Partnership agreement. Such default provisions shall be on terms no less favorable than those applicable to third party investors in the related Investment Fund, will be fully disclosed to Eligible Employees at the time they are offered the right to participate in the Partnership, and the General Partner will not elect to exercise any alternative involving the forfeiture by the defaulting Limited Partner of a portion of his or her capital account if the defaulting Limited Partner is suffering from, or will suffer, severe hardship.

29. During the existence of each Partnership, books and accounts of the Partnership will be kept, in which the General Partner of the Partnership will enter, or cause to be entered, all business transacted by the Partnership and all moneys and other consideration received, advanced, paid out, or delivered on behalf of the Partnership, the results of the Partnership's operations, and each partner's capital. Such books will at all times be accessible to all partners of the Partnership, subject to certain reasonable limitations to address concerns with respect to, among other things, the confidentiality of certain information. In addition, for each fiscal year of a Partnership, the General Partner of the Partnership will cause an examination of the financial statements of the Partnership to be made by a nationally recognized firm of certified public accountants. A copy of the accounts' report with respect to each fiscal year, which will include the Partnership's financial statements, will be mailed or otherwise furnished to each partner of the Partnership within a specified period after the end of such fiscal year. Each Partnership also will supply all information reasonably necessary to enable the partners of the Partnership to prepare their Federal and state income tax returns. The General Partner generally also will furnish information regarding each Partnership to the Partners on a quarterly basis. It is expected that the scope and nature of the information furnished to the Limited Partners of any Partnership will be the same as that furnished to the third party investors of the related Investment Fund.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers; or by members of the immediate family of such employers, persons on retainer, or former employees.

2. Section 6(e) provides that in connection with any order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. Applicants request an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act, and the rules and regulations thereunder, except section 9, sections 17 and 30 (except as described below), sections 36 through 53, and the rules and regulations thereunder.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. Applicants request an exemption from section 17(a) of the Act to the extent necessary to: (a) Permit an entity within the Morgan Stanley Group, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; (b) permit any Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which such Partnership, and company controlled by such Partnership, or any member of the Morgan Stanley Group has invested or will invest, or (ii) with which such Partnership, any company controlled by such Partnership, or any entity within the Morgan Stanley Group is or will become otherwise affiliated; and (c) permit a Non-MS Investment Fund Partner, acting as principal, to engage in any transaction directly or indirectly with the related Partnership or any company controlled by such Partnership. The transactions to which any Partnership is a party will be effected only after a determination by the Board that the requirements of Condition 1 below have been satisfied. In addition, these transactions will be effected only to the extent not prohibited by the limited partnership agreements or other organizational agreements of the related Investment Fund and the Partnership in question.

5. The principal reason for the requested exemption is to ensure that each Partnership will be able to invest in companies, properties, or vehicles in which an entity within the Morgan Stanley Group (including without limitation the related Investment Fund), or the entity's employees, officers, directors, or advisory directors, or the partners of or other investors in the related Investment Fund, may make or have already made an investment. The relief also is requested to permit each Partnership the flexibility to deal with its portfolio investments in the manner the General Partner deems most advantageous to all partners of or investors in such Partnership, or as required by the related Investment Fund or the Partnership's other co-investors. Furthermore, the requested exemption is sought to ensure that a Non-MS Investment Fund Partner will not directly or indirectly become subject to a burden, restriction, or other adverse effect by virtue of the related Partnership's participation in an investment opportunity. Without this exemption, a Non-MS Investment Fund Partner may be restricted in its ability to engage in transactions with the related Partnership's portfolio companies, which would not have been the case had such Partnership not invested in such portfolio companies.

6. The partners of or investors in each Partnership will have been fully informed of the possible extent of such Partnership's dealings with the related Investment Fund or another entity within the Morgan Stanley Group or with a Non-MS Investment Fund Partner and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the partners of or other investors in each Partnership, on the one hand, and the related Investment Fund or another entity within the Morgan Stanley Group or the Non-MS Investment Fund

Partners, on the other hand, is the best insurance against any risk of abuse.

7. Applicants state that a Partnership will not make loans to the related Investment Fund or any other entity within the Morgan Stanley Group, or to any employee, officer, director, or advisory director of the Morgan Stanley Group, with the exception of short-term repurchase agreements or other fully secured loans to an entity within the Morgan Stanley Group. In addition, a Partnership will not sell or lease any property to the related Investment Fund or any other entity within the Morgan Stanley Group, except on terms at least as favorable as those obtainable from unaffiliated third parties.

8. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such companies. Rule 17d–1 under section 17(d) prohibits most joint transactions unless approved by order of the SEC. Applicants request an exemption from section 17(d) and rule 17d–1 thereunder to the extent necessary to permit affiliated persons of each Partnership (including without limitation the General Partner, the related Investment Fund, and other entities within the Morgan Stanley Group) or affiliated persons of any of these persons (including without limitation the Non-MS Investment Fund Partners) to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Partnership or a company controlled by such Partnership is a participant. The exemption requested would permit, among other things, co-investments by each Partnership and individual partners or other investors or employees, officers, directors, or advisory directors of the Morgan Stanley Group making their own individual investment decisions apart from the Morgan Stanley Group.

9. Compliance with section 17(d) would prevent each Partnership from achieving its principal purpose. Because of the number and sophistication of the potential partners of or investors in a Partnership and persons affiliated with such partners or investors, strict compliance with section 17(d) would cause a Partnership to forego investment opportunities simply because a partner or investor or other affiliated person of the Partnership (or any affiliate of such a person) also had, or contemplated making, a similar investment. In addition, attractive investment opportunities of the types considered by a Partnership often require each participant in the transaction to make available funds in an amount that may be substantially greater than may be available to the Partnership alone. As a result, the only way in which a Partnership may be able to participate in such opportunities may be to co-invest with other persons, including its affiliates. The flexibility to structure co-investments and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. The concern that permitting co-investments or joint investments by the related Investment Fund or another entity within the Morgan Stanley Group or by the Non-MS Investment Fund Partners on the one hand, and a Partnership on the other, might lead to less advantageous treatment of the Partnership, should be mitigated by the fact that: (a) The Morgan Stanley Group, in addition to its substantial stake as a general partner or manager in such Investment Fund and such Partnership, will be acutely concerned with its relationship with the key personnel who invest in the Partnership; and (b) senior officers and directors of the Morgan Stanley Group will be investing in such Partnership.

10. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicants request an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit an entity within the Morgan Stanley Group to act as custodian without a written contract. Because there is such a close association between each Partnership and the Morgan Stanley Group, requiring a detailed written contract would expose the Partnership to unnecessary burden and expense. Furthermore, any securities of a Partnership held by the Morgan Stanley Group will have the protection of fidelity bonds. An exemption is requested from the terms of rule 17f–1(b)(4), as applicants do not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

11. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Partnership to comply with rule 17g–1 without the necessity of having a majority of the members of the related Board who are not ''interested persons'' take such actions and make such approvals as are set forth in rule 17g–1.

12. Section 17(j) and rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from section 17(j) and rule 17j–1 (except rule 17j–1(a)) because the requirements contained therein are burdensome and unnecessary in the context of the Partnerships. Requiring each Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the partners of or investors in such Partnership by virtue of their common association in the Morgan Stanley Group; the substantial and largely overlapping protections afforded by the conditions with which applicants have agreed to comply; the concern of the Morgan Stanley Group that personnel who participate in each Partnership actually receive the benefits they expect to receive when investing in such Partnership; and the fact that the investments of the Partnerships will be investments that usually would not be offered to the investors, including those investors who would be deemed access persons, as individual investors. Accordingly, the requested exemption is consistent with the purposes of the Act, because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of any Partnership.

13. Sections 30(a), 30(b) and 30(d), and the rules under those sections, generally require that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports

and financial statements. The forms prescribed by the SEC for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to partners of or investors in the Partnerships. Exemptive relief is requested to the extent necessary to permit each Partnership to report annually to its investors in the manner described above in paragraph 29. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partner, the managing general partner or manager, if any, of such General Partner, members of the related Board, and any other persons who may be deemed members of an advisory board of such Partnership from filing reports under section 16 of the Exchange Act with respect to their ownership of interests in the Partnership.

14. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all the parties and the fact that each Partnership is an ''employees' securities company'' as defined in section 2(a)(13). Each Partnership will be conceived and organized and managed by persons who will be investing, directly or indirectly, or are eligible to invest, in such Partnership, and will not be promoted by persons outside the Morgan Stanley Group seeking to profit from fees or investment advice or from the distribution of securities. Applicants also submit that the terms of the proposed affiliated transactions will be reasonable and fair and free from overreaching.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the Board, through the General Partner of such Partnership, determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the partners of or investors in such Partnership and do not involve overreaching of the Partnership or its partners or investors on the part of any person concerned; and (b) the transaction is consistent with the interests of the partners of or investors in such Partnership, such Partnership's organizational documents and such Partnership's reports to its partners or investors. In addition, the General Partner of each Partnership will record and preserve a description of such affiliated transactions, the Board's findings, the information or materials upon which the Board's findings are based and the basis therefor. All such records will be maintained for the life of such Partnership and at least two years thereafter, and will be subject to examination by the SEC and its staff.[5]

2. In connection with the Section 17 Transactions, the Board, through the General partner, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of such Partnership in any investment in which a ''Co-Investor,'' as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which such Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term ''Co-Investor,'' with respect to any Partnership, means any person who is: (a) An ''affiliated person'' (as such term is defined in the Act) of such Partnership; (b) an entity within the Morgan Stanley Group; (c) an officer or director of an entity within the Morgan Stanley Group; or (d) a company in which the General Partner of such Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities (including without limitation the related Investment Fund). The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities under section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

4. Each Partnership and the General Partner or manager of such Partnership will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the partners of or investors in such Partnership, and each annual report of such Partnership required to be sent to such partners or investors, and agree that all such records will be subject to examination by the SEC and its staff.[6]

5. The General Partner of each Partnership will send to each partner of or investor in such Partnership who had an interest in any capital account of such Partnership at any time during the fiscal year then ended Partnership financial statements audited by such Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a partner or investor in such Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the partner or investor of his or its federal and state income tax returns and a report of the investment activities of such Partnership during such year.

6. In any case where purchases or sales are made by a Partnership from or

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[6] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

to an entity affiliated with the Partnership by reason of a 5% or more investment in such entity by a Morgan Stanley Group advisory director, director, officer or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1497 Filed 1–19–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 6, 1995

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49989
Date filed: January 4, 1995
Parties: Members of the International Air Transport Association
Subject: TC123 Reso/P 0121 dated November 11, 1994; North/Mid/South Atlantic Resos r-1 to r-29
Proposed Effective Date: March 1, 1995

Docket Number: 49990
Date filed: January 4, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0666 dated October 18, 1994; Africa-TC3 Resos r-1 to r-34
Proposed Effective Date: April 1, 1995

Docket Number: 49991
Date filed: January 4, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0672 dated November 18, 1994; Middle East-TC3 Resos r-1 to r-31
Proposed Effective Date: April 1, 1995

Docket Number: 49992
Date filed: January 4, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0669 dated November 4, 1994; Europe-Southwest Pacific Resos r-1 to r-23
Proposed Effective Date: April 1, 1995

Docket Number: 49993
Date filed: January 4, 1995
Parties: Members of the International Air Transport Association
Subject: Telex TC12 Mail Vote 724; Amend Europe-USA SPEX fares
Proposed Effective Date: April 1, 1995

Docket Number: 50000
Date filed: January 6, 1995
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/077 dated December 5, 1994; Resolution 762 r-1
Proposed Effective Date: June 1, 1995

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–1517 Filed 1–19–95; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 6, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49995
Date filed: January 4, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 1995
Description: Application of Imperial Airlines, Ltd., pursuant to Title 49 of the United States Code and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in the foreign charter air transportation of persons and property between a point or points in the United Kingdom and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stop overs as well as other charter foreign air transportation pursuant to Part 212 of the Department's Regulations.

Docket Number: 50001
Date filed: January 6, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 3, 1995
Description: Joint Application of Northwest Airlines, Inc. and Delta Airlines, Inc., pursuant to 49 U.S.C. Section 41105 and Subpart Q of the Regulations, requests approval of the transfer to Northwest of the authority held by Delta to transport persons, property and mail between Detroit, Michigan and London (Gatwick), United Kingdom, pursuant to segment 13 of Delta's Certificate of Public Convenience and Necessity for Route 616, as amended by Final Order 92–4–33 issued on April 14, 1992.

Docket Number: 49912
Date filed: January 4, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 1995
Description: Amendment to Application of Florida Cargo Express, Ltda., pursuant to Section 402 of the Act and Subpart Q of the Regulations for a Foreign Air Carrier Permit to seek authority to engage in the scheduled air transportation of property and mail from the points La Paz; Santa Cruz; and Cochabamba, Bolivia, on the one hand, to the point Miami, Florida, on the other hand.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–1516 Filed 1–19–95; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 30, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49987
Date filed: December 28, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1995
Description: Application of Challengair, S.A. pursuant to Section 41302, and Subpart Q of the Regulations, requests a Foreign Air Carrier Permit to authorize charter foreign air transportation of persons, property and/or mail between a point or points in the Kingdom of Belgium and a point or points in the United States.